

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 93-503-C - ORDER NO. 95-147 ✓
JANUARY 25, 1995

IN RE: Investigation of Level of Earnings) ORDER
of Southern Bell Telephone & Telegraph) DENYING
Company.) REHEARING AND
) RECONSIDERATION

This matter comes before the Public Service Commission of South Carolina (the Commission) on the January 16, 1995 Petition for Rehearing and Reconsideration of our Order No. 95-2, filed by BellSouth Telecommunications, Inc. DBA Southern Bell Telephone & Telegraph Company (Southern Bell or the Company). In that Petition, Southern Bell contests the Commission's conclusion in Order No. 95-2 that interest at 12% per annum on the ordered refund should begin to accrue at December 31, 1992, that date being the end of the review period for which the \$36,282,600 refund was ordered in our Order No. 94-1229. Southern Bell alleges that the Commission's conclusion and decision with regard to interest is improper because the Commission lacks authority to order interest in this Docket, and that, even assuming that the Commission had the authority to award the interest, that the Intervenor in the case did not satisfy the applicable legal standard. For the reasons stated below, the Petition must be denied.

Southern Bell states correctly that the South Carolina General Assembly has empowered the Commission to award interest in only two specific instances, (1) bonded rate increases and (2) the charging of unapproved rates. Southern Bell alleges that neither situation is present in the case at bar, because first, there has been no rate increase by Southern Bell, and second, that Southern Bell's rates were approved by the Commission in Order No. 91-595, dated August 20, 1991, and in Southern Bell's last general rate case in 1985. Southern Bell thus concludes that the Commission's finding awarding interest on the refund in Order No. 95-2 was erroneous, arbitrary, capricious, and characterized by an abuse of discretion and violation of S.C. Code Ann., §§1-23-380 (1976, as amended) and 58-9-10 (1976, as amended).

The Commission holds that the present situation clearly fits into the charging of unapproved rates category. The case of Hamm v. Southern Bell Telephone & Telegraph Company, ____ S.C. ____ 406, S.E.2d 157 (1991) is illustrative of the principle applied by the Commission in the present case. In the Hamm case, the Commission Order approving an increase in TouchTone rates was reversed by the South Carolina Supreme Court. The Court held that the matter should be remanded to the Commission for the Commission to determine the amount to be refunded, taking into consideration the appropriate interest rate to be applied to the refunds. The case cited Hamm v. Central States Health and Life Company of Omaha, 299 S.C. 500, 386 S.E.2d 250 (1989), wherein the Court

stated that:

When a regulated company requests a rate increase which is approved by the regulating authority, but timely appealed and found to be unlawfully established, that company cannot keep funds to which it was never entitled.

Although the Company began to collect rates in that case after an approval by the Commission, the Supreme Court thereafter ruled those rates to be unlawful, and the rates therefore became unapproved and subject to refunds with interest.

Likewise, in the case at bar, although as Southern Bell correctly states the rates were approved by the Commission originally in Order No. 91-595, dated August 20, 1991, and in Southern Bell's last general rate case in 1985, the Supreme Court declared the methodology behind the Incentive Regulation Plan (IRP) to be unlawful in South Carolina Cable Television Association v. Public Service Commission of South Carolina, ____ S.C. ____, 437 S.E.2d 38 (1993). Therefore, under this case authority, the rates as charged became unapproved rates. Further, as stated in our Order No. 95-2, that although Southern Bell did not specifically seek a rate increase in October 1990 when it applied for regulation under incentive regulation, the Commission concluded that Southern Bell's request to avail itself of incentive regulation was similar to an application for a rate increase, since Southern Bell applied for the opportunity to retain those earnings it could attain above its authorized rate of return. Therefore, the request was analogous to a rate increase request.

For these reasons, we believe that the awarding of interest on

the refunds ordered as per Order No. 95-2 was proper, appropriate, and legal under the South Carolina case law, and that the Commission correctly carried out the past holding of the South Carolina Supreme Court wherein interest may be awarded on refunds of unapproved rates.

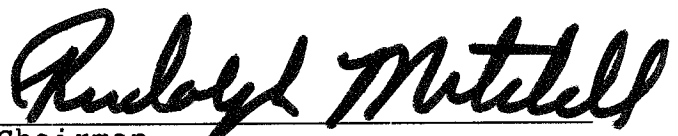
Further, having concluded this, we do not believe that the Order is in violation of any of the other provisions of the Administrative Procedures Act as cited by Southern Bell.

IT IS THEREFORE ORDERED THAT:

1. The Petition for Rehearing and Reconsideration of Order No. 95-2 is hereby denied.

2. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:


Executive Director

(SEAL)